

than a data portion of said first frame of data, thereby triggering said need to switch from said first transport format to said second transport format.

### REMARKS

Claims 1-71 are cancelled without prejudice, and claims 72-79 are substituted for examination and allowance. Examiner has rejected claims 1-71 based on Willenegger (US Publication 2002/0009061) under section 102(e). Applicants believe the new claims 72-79 are allowable. Support for the new claims are found throughout the application as filed, and more specifically paragraphs 1095-1099.

Examiner is invited to call the undersigned representative if such a call would expedite the allowance of the application.

### REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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75. (New) The method as recited in claim 72, further comprising:  
determining a data portion of said second frame of data requiring a different SNIR than a data portion of said first frame of data, thereby triggering said need to switch from said first transport format to said second transport format.

76. (New) An apparatus for communication of data in a communication system utilizing a feedback power control scheme, the apparatus comprising:  
a transmitter for transmitting a first frame of data in accordance with a first transport format and at a first power level corresponding to said first transport format;  
a controller for determining a need to switch transmission transport format from said first format to a second transport format;  
said transmitter further for transmitting a second frame of data in accordance with said second transport format and at a second power level corresponding to said second transport format prior to receiving a power control feedback from a receiving destination regarding transmission power level of said second frame of data;  
wherein said transmitting said second frame of data occurs in a time frame immediately after a time frame used for said transmitting said first frame of data.

77. (New) The apparatus as recited in claim 76, wherein said controller is further configured for determining said second power level to be higher for a data portion of said second frame of data than said first power level for a data portion of said first frame of data.

78. (New) The apparatus as recited in claim 76, further , wherein said controller is further configured for determining said second power level to be the same for a reference portion of said second frame of data and said first power level for a reference portion of said first frame of data.

79. (New) The apparatus as recited in claim 76, , wherein said controller is further configured for determining a data portion of said second frame of data requiring a different SNIR